IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY SECOND DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

-

WRIT PETITION NO : 10596 of 2004

Between:

B.H.Panduranga Rao, S/o.Murahari Rao,
R/o.Tadikonda Village & Mandal, Guntur Dist.

..... PETITIONER

AND

1 Joint Collector, Guntur.
2 Revenue Divisional officer, Guntur.
3 Mandal Revenue officer, Tadikonda Mandal,Guntur Dist.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to to issue an appropriate writ, order or direction, more particularly in the nature of a Mandamus declaring the action of the 2nd respondent in issuing the impugned proceedings in Rc.No.2061/2002-G, dated 7-6-2004, as illegal, contrary to law despite the fact of pending of the Appeal No.96/2002-S.7 before the 1st respondent in violation of Art.14,21 of the Constitution of India and pass.

Counsel for the Petitioner:MR.D.HANUMANTHA RAO

Counsel for the Respondent No.: GP FOR CIVIL SUPPLIES

The Court at the stage of admission made the following ORDER:

The petitioner was appointed as a Fair Price Shop dealer in the year 1986 in respect of F.P. Shop No.435, Tadikoinda Village, Guntur District. He was served with a show cause notice alleging that when his shop was inspected on 26-07-2002 during which certain variations were found in the stocks, and therefore, he was called upon to show cause as to why his authorization should not be cancelled. It appears that the petitioner failed to submit his explanation and consequently his authorization was cancelled on 21-08-2002. He preferred an appeal against the said order before the 1st respondent-Joint Collector, Guntur, which was allowed, and remanded to the Revenue Divisional Officer, Guntur for consideration afresh. In the meanwhile, a notification was issued by the 2nd respondent-Revenue Divisional Officer on 12-09-2002 inviting applications for making appointment on regular basis. Aggrieved by the same, the petitioner filed W.P.No.19264 of 2002. This Court while issuing rule nisi, granted interim stay of notification on 3-10-2002 and further ordered that since the order of cancellation is deemed to have been set aside by the appellate authority, the petitioner shall be entitled to continue as a fair price shop dealer, till orders are passed by the 2nd respondent-Revenue Divisional Officer. It appears that the 2nd respondent passed an order on 12-10-2002 cancelling the authorization of the petitioner. He moved W.P.M.P.No.29523 of 2002 in W.P.No.19264 of 2002 seeking suspension of the said order. This Court by order dated 29-1-2003 granted interim suspension. Subsequently, the main writ petition

i.e. W.P.No.19264 of 2002 was disposed of by order dated 18-3-2004 observing that against the order dated 12-10-2002, the petitioner has a right of appeal and therefore, it is for him to challenge the subsequent cancellation of authorization by filing an appeal. It was also observed that the cause of action existed as on the date of filing of the writ petition does not survive in view of the subsequent cancellation of authorization and by filing a W.P.M.P. the said order cannot be suspended. Accordingly, W.P.No.19264 of 2002 was disposed of granting liberty to the petitioner to file an appeal against the order of cancellation dated 12-10-2002, within a period of 15 days. The petitioner states that by that time, the petitioner has already preferred an appeal on 4-12-2002 and the same is pending on the file of the Joint Collector, Guntur, as Appeal No.96/2002-S.7. However, the said fact could not be brought to the notice of this Court. It is also stated that even after the disposal of W.P.No.19264 of 2002 the petitioner continued to supply the essential commodities till 7-6-2004, on which date the 2nd respondent-Revenue Divisional Officer passed an order stating that in view of the final orders passed in W.P.No.19264 of 2002, there is no necessity for the petitioner to continue as a fair price shop dealer and directed the Mandal Revenue Officer to implement the orders of cancellation and to send the proposals of DWCRA woman for temporary appointment until regular appointment is made. Challenging the said order, the present writ petition has been filed.

I have heard the learned counsel for the petitioner as well as the learned Government Pleader for Civil Supplies and perused the material on record.

Admittedly, the appeal preferred by the petitioner against the order of cancellation dated 12-10-2002, is pending before the 1st respondent-Joint Collector, Guntur. Though the authorization was cancelled on 12-10-2002, the same was suspended by this Court on 29-01-2003. It is true that W.P.No.19264 of 2002 was disposed of on 18-03-2004, but even thereafter the petitioner has been allowed to distribute the commodities till 7-6-2004, on which date the Revenue Divisional Officer, Guntur,

directed to send the proposals for making temporary appointment.

Having regard to the facts and circumstances of the case, and particularly keeping in view that though the proceedings are pending against the petitioner from August, 2002 onwards, the petitioner has been distributing the commodities without interruption and particularly keeping in view that the statutory appeal against the order of cancellation is pending, I am of the view that it would be appropriate to permit the petitioner to continue till the appeal pending on the file of the Joint Collector, Guntur, is disposed of. The impugned proceedings show that only proposals for temporary appointment were called for. The learned Counsel for the petitioner states that no such appointment has been made so far.

Accordingly, the impugned order dated 7-6-2004 is set aside and the respondents 2 and 3 are directed to allow the petitioner to distribute the commodities till the appeal pending on the file of the 1st respondent is disposed of. There shall be a further direction to the 1st respondent to consider the appeal pending on his file and to pass appropriate orders in accordance with law, as expeditiously as possible preferably, within a period of four weeks from the date of receipt of a copy of this order.

Accordingly, the writ petition is disposed of. No costs.

22-07-2004

Note:Furnish copy by 26-07-2004

(B/o)

GJ

To

1 Joint Collector, Guntur.
2 Revenue Divisional officer, Guntur.
3 Mandal Revenue officer, Tadikonda Mandal,Guntur Dist.

4. Two C.Cs. to Government Pleader for Civil Supplies, High Court of

A.P., High Court Buildings, Hyderabad. (OUT)

5. Two C.D. copies.